

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA

UNITED STATES OF AMERICA, :
Plaintiff, : Civil No. 1:07CV00277
v. :
\$7,000.00 in U.S. CURRENCY :
and :
2003 NISSAN 350Z, :
VIN JN1AZ34E43T002843, :
Defendants. :

**MEMORANDUM IN SUPPORT OF
PLAINTIFF'S MOTION TO STRIKE**

NOW COMES the plaintiff United States of America, by and through Anna Mills Wagoner, United States Attorney for the Middle District of North Carolina, and respectfully submits the following Memorandum in support of its Motion to Strike the claim of Joseph Brumby, a/k/a Yasir Justice El Bey.

BACKGROUND

On April 10, 2007, plaintiff initiated this case by filing a Verified Complaint of Forfeiture alleging that the defendant U.S. Currency was furnished or intended to be furnished in exchange for a controlled substance or represents proceeds traceable to such an exchange and is therefore subject to forfeiture pursuant to 21 U.S.C. § 881(a)(6) and 18 U.S.C. § 981(a)(1)(C), and that the defendant vehicle was used or intended for use, to transport, or in any manner facilitate the transportation, sale, receipt, possession or concealment of a controlled substance or other property described in 21 U.S.C. § 881(a)(1),

(2) or (9) and is therefore subject to forfeiture pursuant to 21 U.S.C. § 881(a)(4).

Joseph Brumby, Jr. was served via certified mail on July 13, 2007 with the Verified Complaint of Forfeiture, Warrant for Arrest, and Legal Notice.¹

On October 29, 2007, Joseph Brumby, Jr., a/k/a Yasir Justice El Bey, filed a Request To Release Seized Property (Dkt. # 21). On November 21, 2007, Plaintiff filed a response to Joseph Brumby's Request to Release Seized Property (Dkt. #23), alleging, *inter alia*, that Joseph Brumby lacked standing to move for relief under 18 U.S.C. § 983(f) because he had failed to file a claim in this action. On November 26, 2007, Joseph Brumby filed a "Demand By Affidavit & Notice for Return of Property Official Notice of Claim with Offer of Proof" (Dkt. #24).

QUESTION PRESENTED

Should the Court strike a proponent's claim under Rule G(8)(c)(i)(A) of the Supplemental Rules for Admiralty or Maritime and Asset Forfeiture Claims when a claimant in a forfeiture proceeding fails to file a claim until more than 100 days after the statutory deadline for filing a claim?

¹Kendal Brumby, a/k/a Ken d El Bey, brother of Joseph Brumby, subsequently filed various motions and petitions in response to Plaintiff's Complaint, all of which are pending.

ARGUMENT

THE COURT SHOULD GRANT THE PLAINTIFF'S MOTION TO STRIKE BECAUSE CLAIMANT FAILED TO FILE A TIMELY CLAIM

Joseph Brumby, a/k/a Yasir Justice El Bey, was served with a copy of the Verified Complaint of Forfeiture, Warrant for Arrest, and Legal Notice on July 13, 2007. Instructions in the Legal Notice (Attachment 1) and on the cover letter directed to Brumby (Attachment 2) specifically stated that in order to contest the forfeiture, a verified claim had to be filed within thirty-five (35) days, pursuant to Rule G(5)(a)(ii)(A) of the Supplemental Rules for Admiralty or Maritime and Asset Forfeiture Claims. (“Unless the court for good cause sets a different time, the claim must be filed: (A) by the time stated in a direct notice sent under Rule G(4)(b).”) Joseph Brumby thus had until August 17, 2007, to file a claim in this action. His claim filed on November 26, 2007, is therefore untimely.

Rule G(8)(c)(i)(A) of the Supplemental Rules for Admiralty or Maritime and Asset Forfeiture Claims states that “[a]t any time before trial, the government may move to strike a claim or answer for failing to comply with Rule G(5)” Joseph Brumby, a/k/a Yasir Justice El Bey, received direct notice of this action. As required by the Supplemental Rules for Admiralty or Maritime and Asset Forfeiture Claims, the notice stated the deadline for filing a claim to the defendant properties was thirty-five (35) days after the date of the notice. Joseph Brumby filed his Request to Release Seized Property 73 days after expiration of the time for filing a claim. He failed to file a claim until more than 100 days after the deadline for filing; therefore, this Court should grant the Plaintiff’s Motion to Strike the claim of

Joseph Brumby, a/k/a Yasir Justice El Bey.

CONCLUSION

For the reasons stated herein, the Plaintiff respectfully requests this Court grant its Motion to Strike the claim of Joseph Brumby, a/k/a Yasir Justice El Bey.

This the 3rd day of December, 2007.

Respectfully submitted,

ANNA MILLS WAGONER
United States Attorney

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CERTIFICATE OF SERVICE

I hereby certify that on December 3, 2007, the foregoing Memorandum in Support of Plaintiff's Motion to Strike was electronically filed with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the following: [None], and I hereby certify that the document was mailed to the following non-CM/ECF participant:

Addressee:

Joseph BRUMBY, Jr.
a/k/a/ Yasir Justice El Bey
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Greensboro, NC 27402-0576

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